

Thomas J. Budge (ISB# 7465)
Elisheva M. Patterson (ISB# 11746)
RACINE OLSON, PLLP
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
tj@racineolson.com
elisheva@racineolson.com

Wildman, Eric J.

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

**DISTRICT COURT OF THE STATE OF IDAHO
FOURTH JUDICIAL DISTRICT
ADA COUNTY**

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and MATHEW WEAVER in
his capacity as the Director of the Idaho
Department of Water Resources.

Respondents.

Case No. CV- CV01-24-10821

**PETITION FOR
JUDICIAL REVIEW**

Fee Category L.3: \$221.00

IN THE MATTER OF THE
DISTRIBUTION OF WATER TO
VARIOUS WATER RIGHTS HELD BY
AND FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Idaho Ground Water Appropriators, Inc. (IGWA), submits this petition for judicial review pursuant to Idaho Code § 67-5270 and Rule 84 of the Idaho Rules of Civil Procedure.

1. This petition requests judicial review of the Order Denying IGWA’s Motion to Vacate or Amend 2022 Compliance Order (“Order Denying Motion”), issued by the Director of the Idaho Department of Water Resources (“Department”) on May 2, 2024, and the Order Denying IGWA’s Request for Clarification of Order Denying IGWA’s Motion to Vacate or Amend 2022 Compliance Order (“Order Denying Clarification”), issued by the Director on May 28, 2024, in *In the Matter of the Distribution of Water to Various Water Rights Held by and for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company*, IDWR Docket No. CM-DC-2010-001 (“SWC Delivery Call”), and *In the Matter of IGWA’s Settlement Agreement Mitigation Plan*, IDWR Docket No. CM-MP-2016-001 (“Settlement Agreement Mitigation Plan”).

2. This court is the proper venue under Idaho Code § 67-5272(b) because the final agency action was taken in Ada County, Idaho.

3. Pursuant to an Administrative Order issued by the Idaho Supreme Court on December 9, 2009, this case should be reassigned to the presiding judge of the Snake River Basin Adjudication district court for further proceedings.

4. The facts upon which the Order Denying Motion and the Order Denying Clarification are based were established in filings submitted to IDWR in the SWC Delivery Call and the Settlement Agreement Mitigation Plan, including facts established at the hearing held February 8, 2024, and March 14-15, 2024, in those cases. IGWA did not request an additional hearing pursuant to Idaho Code § 42-1701A because there are no issues of material fact. The issues for which IGWA files this petition for judicial review are strictly issues of law.


5. IGWA submits the following preliminary statement of issues for judicial review:

- 5.1 Whether the Director erred as a matter of law by disallowing IGWA’s adoption of a three-year baseline to measure compliance with the Settlement Agreement.
- 5.2 Whether the Director erred as a matter of law in concluding that IGWA cannot “unilaterally decide to change the method used for determining compliance,” without citing or explaining what provision of the 2016 Mitigation Plan purportedly prohibits such a change.

- 5.3 Whether Director erred as a matter of law in concluding that IGWA did not timely request a hearing on the baseline-year issue when the matter was under review by the District Court in Ada County Case No. CV01-23-07893.
 - 5.4 Whether the Director erred as a matter of law in declining to address whether alternative baseline-year metrics are allowed in future performance reports.
 - 5.5 Whether the Director erred as a matter of law in concluding that the 2016 Mitigation Plan is unambiguous with respect to the baseline-year metric.
 - 5.6 Whether the Department is liable for attorney fees under Idaho Code § 12-117 for declaring the 2016 Mitigation Plan to be without any ambiguity with regards to the baseline-year metric, without a reasonable basis in fact or law.
 - 5.7 Pursuant to I.R.C.P. 84(c)(5), IGWA reserves the right to assert additional issues for judicial review. A final statement of issues will be contained in IGWA's opening brief to be submitted in support of this Petition.
6. The undersigned attorney certifies as follows:
 - 6.1 Service of this Petition has been made on the Department.
 - 6.2 A request has been made to Department for the estimated fee to prepare the agency record.
 - 6.3 IGWA will promptly pay the estimated fee for the Department to prepare the agency record.

DATED this 25th day of June, 2024.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2024, I filed the foregoing document via iCourt and served it upon the persons below via email as indicated:


Thomas J. Budge

Clerk of the Court ADA COUNTY DISTRICT COURT 200 West Front Street Boise, ID 83702	iCourt
Director Mathew Weaver IDAHO DEPT. OF WATER RESOURCES Garrick L. Baxter P.O. Box 83720 Boise, Idaho 83720-0098	file@idwr.idaho.gov mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov
John K. Simpson Travis L. Thompson Abigail Bitzenburg MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063	jsimpson@martenlaw.com tthompson@martenlaw.com abitzenburg@martenlaw.com jnielson@martenlaw.com
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318	wkf@pmt.org
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. DEPARTMENT OF JUSTICE 999 18 th St., South Terrace, Suite 370 Denver, CO 80202	david.gehlert@usdoj.gov
Matt Howard U.S. BUREAU OF RECLAMATION 1150 N Curtis Road Boise, ID 83706-1234	mhoward@usbr.gov

<p>Sarah A Klahn Maximilian C. Bricker SOMACH SIMMONS & DUNN 2033 11th Street, Ste 5 Boulder, Co 80302</p>	<p>sklahn@somachlaw.com mbricker@somachlaw.com vfrancisco@somachlaw.com</p>
<p>Rich Diehl CITY OF POCATELLO P.O. Box 4169 Pocatello, ID 83205</p>	<p>rdiehl@pocatello.us</p>
<p>Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83 702</p>	<p>cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>
<p>Robert E. Williams WILLIAMS, MESERVY, & LOTHSPREICH, LLP P.O. Box 168 Jerome, ID 83338</p>	<p>rewilliams@wmlattys.com</p>
<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405</p>	<p>rharris@holdenlegal.com</p>
<p>Michael A. Kirkham CITY ATTORNEY, CITY OF IDAHO FALLS P.O. Box 50220 Idaho Falls, ID 83405</p>	<p>mkirkham@idahofallsidaho.gov</p>
<p>Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403</p>	<p>sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com</p>
<p>Dylan Anderson DYLAN ANDERSON LAW PLLC PO Box 35 Rexburg, ID 83440</p>	<p>dylan@dylanandersonlaw.com</p>

<p><i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE P.O. Box 910 Burley, ID 83318</p>	<p>wparsons@pmt.org</p>
<p><i>COURTESY COPY TO:</i> Craig Chandler IDWR—Eastern Region 900 N. Skyline Drive, Ste. A Idaho Falls, ID 83402</p>	<p>craig.chandler@idwr.idaho.gov</p>
<p><i>COURTESY COPY TO:</i> Corey Skinner IDWR—Southern Region 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3003</p>	<p>corey.skinner@idwr.idaho.gov</p>
<p><i>COURTESY COPY TO:</i> Jerry R. Rigby RIGBY, ANDRUS & RIGBY LAW, PLLC PO Box 250 Rexburg, ID 83440</p>	<p>jrigby@rex-law.com</p>
<p><i>COURTESY COPY TO:</i> Andrew J. Waldera SAWTOOTH LAW OFFICES, PLLC 1101 W. River Street, Ste. 110 Boise, ID 83702</p>	<p>andy@sawtoothlaw.com</p>